

FINAL
Signed:

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on February 12, 1999 at
3:30 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)

Members Excused: Sen. John C. Bohlinger (R)

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 385, SB 388, 2/6/1999
Executive Action: SB 224, SB 364, SB 359,

HEARING ON SB 385

Sponsor: SEN. DUANE GRIMES, SD 20, Clancy

Proponents: Jerry Loendorf, Montana Medical Association
Tom Ebzery, Yellowstone Community Health Plan
Todd Thun, Montana Nurses' Association

Opponents: None

Information: Nancy Ellery, Department of Public Health & Human
Services

Claudia Clifford, Insurance Commissioner's Office

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, Clancy, said **SB 385** dealt with health care information database, and it would ultimately be referred to the Finance and Claims Committee. He said currently, the Governor's proposal included a trust fund, but no mechanism for distribution. Last session, the Health Care Advisory Council recommended a consolidated volunteer database be created. The reason was information was available on what happened to the public sector, through the Department of Public Health and Human Services (DPHHS), but the ramifications of the private sector were not understood. He illustrated the need for this bill by relating how the Treasure State Endowment Program, based on pre-selected criteria which could change from session to session, could make recommendations on the spending of the trust. He envisioned this working the same way, i.e., put as much money as possible from the tobacco settlement into a trust fund, and the legislature would make the spending recommendations each biennium. He suggested it was beyond current understanding to make health care decisions which would cover future needs, such as "baby boomers" moving into long-term care. This issue was quite complex, especially when it came to setting up the criteria to balance all the needs which could present themselves to future legislators.

SEN. GRIMES said he envisioned Section 1 as newspaper headlines saying something to the effect of "Here's the Latest Quarterly Data Out of the Health Care Information Database". In other words, decisions would be based on outcomes. He said the database would not be used for report cards, and the same confidentiality standards would be applicable; in fact, he had visited with most of the insurance companies and they were comfortable with the database concept. The language in Section 2 was very specific and listed the principles by which the database would function.

He said he realized this needed a lot of work, which was why he was suggesting a study; however, he wanted to stress it was distinctly targeted toward health care economics, as opposed to quality care issues. He suggested too many things were done which had a detrimental long-term impact on the majority of the people.

He said Sections 4 and 5 were based on the health care information database which came from the health care information network from last session, while the trust fund idea was addressed in Sections 2 and 3. He felt the tobacco settlement money should be used for health-related issues; therefore, he proposed if the money was put into a trust fund to be used to target the provider network sectors which had the greatest disproportionate costs of care, the result would be a kick-back to all consumers. This bill would set up the right kind of incentives, because currently the system almost discouraged specialists to care for Medicaid patients.

{Tape : 1; Side : A; Approx. Time Counter : 10.6}

Proponents' Testimony:

Jerry Loendorf, Montana Medical Association, said they had reviewed the bill and felt it had good purposes. One was reducing cost-shifting, which was always a source of frustration. Another was using monies in the trust fund for a match for Federal Funds, and providing incentives for providers to cover the uninsured and under-insured. He said the legislature should also, as always, keep access and quality under scrutiny.

Tom Ebzery, Yellowstone Community Health Plan, said they supported the objectives in the bill and felt the source of funding was appropriate. They encouraged its adoption.

Todd Thun, Montana Nurses' Association, said they supported the concept of SB 385.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 14}

Informational Testimony:

Nancy Ellery, Department of Public Health and Human Services (DPHHS), said her division would be responsible for implementing the study. Montana spent \$2 billion per year on health care; yet, there was no statewide information network to tell how the money was spent. She said every program, both in state government and the private sector, had its own database which gave information pertinent to its program; however, there was nothing which allowed looking at the big picture. She said the health information network was not a new idea; in fact, the last two Health Care Advisory Councils spent a great deal of time on this issue. She said there were hundreds of databases to use as models; in fact, they looked at many and considered all facets of

the issue, including confidentiality and data-sharing. The result was a relatively low-cost design, which represented a public-private partnership, which could tap into the existing databases to get needed information. However, that bill did not pass in 1997, which was probably due to health care not being a major crisis, and a high price tag. She said there still was, however, a need for an information network, which would become more critical in the future. If the tobacco settlement monies were to be used for the trust fund, it would be necessary to have a basis for making decisions on which programs would be funded from that fund. Evaluation would ensure their working, and the health care information network would do that.

Claudia Clifford, Insurance Commissioner's Office, said it would be profitable for the policymakers to have a better system to gather data for the whole health care system, because it was very complex and difficult to gather data. She said they had some data, but it was in bits and pieces and located in many places.

Questions from Committee Members and Responses:

SEN. B.F. "CHRIS" CHRISTIAENS asked if the proposal in the bill would be funded via the tobacco tax. **SEN. DUANE GRIMES** said it currently was funded through the General Fund; however, it should be funded through the tobacco settlement.

SEN. CHRISTIAENS commented if the funding from the tobacco settlement did not occur, perhaps it should be funded from the General Fund. However, language could be added which would allow for an alternative funding source in the future. **SEN. GRIMES** agreed, saying he was open to an amendment pertaining to that. In fact, this would be an opportunity for "termed-out" legislators to have their fingerprints on this policy.

{Tape : 1; Side : A; Approx. Time Counter : 20.8}

Closing by Sponsor:

SEN. DUANE GRIMES commented there were differences of opinion regarding health care, because the Department and legislators had different ideas of the cause-and-effect. If this would work successfully, and it was left to the experts, it might develop into something people were committed to and convinced of, i.e. legislators would put as much money as possible into it. He stated that would also include preventative health things upon which decisions had to be made, and would impact both the public and private sector.

{Tape : 1; Side : B; Approx. Time Counter : 0}

HEARING ON SB 388

Sponsor: SEN. B.F. "CHRIS" CHRISTIAENS, SD 23, Great Falls

Proponents: Nancy Aegenes, Montana and American Association of
Naturopathic Physicians
Claudia Clifford, Montana Department of Insurance

Opponents: Susan Witte, Blue Cross/Blue Shield
Mary McCue, Montana Academy of Family Physicians
Tom Ebzery, Yellowstone Community Health Plan
Jerry Loendorf, Montana Medical Association

Information: Mary Dalton, Department of Public Health & Human
Services

Opening Statement by Sponsor:

SEN. B.F. "CHRIS" CHRISTIAENS, SD 23, Great Falls, said the reason for the bill that was a health benefit plan may not prohibit an individual from self-referral to a naturopathic physician. He distributed copies of **EXHIBIT (phs35a01)**, and said it "went to the quick" of why it was important. He said this bill came as a result of listening to his constituents who told him of their difficulties in receiving adequate care from their primary care physicians; however, when they went to a naturopath, at their own expense, they got relief. He declared the current system of medical care was overwhelmed by chronic, degenerative disease, with over 70% of the health care budget spent on the treatment of these diseases. The majority of these chronic diseases could be prevented by a healthy lifestyle or treated by less expensive natural therapies, which up to this point were largely ignored. The reason for way the bill was drafted was it was a proposal to choose one's care provider. He said he had available data which showed insurance costs could decrease with the use of a naturopath, the cost of treatment was less, in most cases, and most folks found immediate relief.

{Tape : 1; Side : B; Approx. Time Counter : 5.2}

Proponents' Testimony:

Nancy Aagenes, Licensed Naturopathic and Acupuncturist, read her written testimony **EXHIBIT (phs35a02)**.

Claudia Clifford, Office of Commissioner of Insurance, said they supported the bill as a consumer choice bill. Their office occasionally got phone calls from frustrated consumers because their choice of provider could not be covered.

Informational Testimony:

Mary Dalton, Department of Public Health and Human Services (DPHHS), read her written testimony **EXHIBIT (phs35a03)**.

{Tape : 1; Side : B; Approx. Time Counter : 13.6}

Opponents' Testimony:

Susan Witte, Blue Cross/Blue Shield (BC/BS), said they opposed the bill because it opened the referral process in managed care plans, with no safeguards for patients or cost incentives for the clients. She said the section dealing with accountability was the problem, because the health benefit plan must permit self-referral by a covered person, and it must be allowed without prior authorization or pre-certification from the health benefit plan. She stated pre-authorization, pre-certification and quality access was what a health plan was all about.

Mary McCue, Montana Academy of Family Physicians, said one of the main problems they had with adding to the list of providers who could become primary care physicians, was it chipped away at the concept of the primary care system. That concept was there should be one physician who was the primary care provider, and if the list continued to expand, that concept was destroyed. One concern was if naturopaths were added to the list of services, would a Health Maintenance Organization (HMO) be required to allow that naturopath physician to perform all the services, which were considered by the HMO to be primary care services. Another concern was, since the naturopath physicians had a more limited scope of services they could provide, it was more likely they would refer patients to specialists. The effect would be the driving up of costs. People in HMOs had to be assured their primary care provider was able to provide a broad range of services, and the primary care physicians she represented could provide all those services. She reported an HMO, in its discretion, could contract with naturopathic physicians, if it chose to. She referred to **EXHIBIT (phs35a04)** and said she wanted it to be included in the record.

{Tape : 1; Side : B; Approx. Time Counter : 18.3}

Tom Ebzery, Yellowstone Community Health Plan, said **SB 388** followed the current pattern of mandating benefits, which they felt resulted in higher costs. He said their HMO relied on a primary care physician, and unlimited access to any provider without oversight or limits was expensive, and not necessarily quality care. He said they surveyed a number of employers, and they were not in support of mandating access to providers; in fact, they believed the market should drive those issues. They also felt these mandates clearly increased premiums and were against them. He referred to a bill from last session, which dealt with OB-GYNs and unlimited self-referral, and said the bill was very specific in what they could and could not do. He maintained those functions would not be accomplished in **SB 388** and he felt the work done by naturopaths was laudable, but did not fit in their health plan.

{Tape : 1; Side : B; Approx. Time Counter : 21.7}

Jerry Loendorf, Montana Medican Association (MMA), said they expressed the same concerns as those of **Mary McCue**. He said he had seen legislation passed over a 30-year period, and the legislation passed last session gave women direct access to a gynecologist without going through a primary care provider. He said there were physician specialists, nurse practitioners and others who wanted the ability to self-refer. Perhaps that was appropriate; however, he suggested waiting a few sessions in order to see how the current system worked.

{Tape : 2; Side : A; Approx. Time Counter : 0}

Questions from Committee Members and Responses:

SEN. DOROTHY ECK commented she thought she heard BC/BS, in a number of their plans, covered naturopathic physicians. **Chuck Butler, BC/BS,** said it was possible they did. He believed acupuncturists were part of the state benefit plan, though he was not sure naturopaths were. There were a number of self-funded plans which BC/BS administered, which had naturopathic benefits provided; however, those contracts were negotiated health plans with employees. He stated BC/BS, under its traditional indemnity or managed care health plans, did not reimburse for the services of naturopaths.

SEN. ECK asked if, under a managed care plan, a naturopath physician would be viewed as a primary care provider. **Chuck Butler** affirmed.

SEN. ECK asked if there were problems in considering naturopath physicians as part of a managed care plan, and wondered if they would make referrals. **Nancy Aagenes** said her practice was a family practice, and she had referral relationships with over 40 doctors in the Helena community alone.

SEN. BOB DEPRATU asked how many naturopath-accredited colleges there were. **Nancy Aagenes** said there were four schools which had accreditation status with the Council on Naturopathic Medical Education.

SEN. DEPRATU asked if naturopathic physicians from unaccredited colleges were practicing. **Ms. Aagenes** said there were none in Montana, because the state had a good licensing law; however, there were those who claimed to practice naturopathic medicine in unlicensed states.

Closing by Sponsor:

SEN. CHRISTIAENS said he believed the bill would lower costs, reporting that of 24 indemnity insurance underwriters, costs increased in only two, and that was only several cents per month. Charges for naturopathic services were comparable to, but less than, those of other primary care medical care providers. When American people were surveyed, it was found they went to their naturopath physician about three times per year, and about five or six times per year to their physician. The reasons people went to naturopathic physicians were: (1) General practice, prevention-oriented medicine; (2) Alternatives to elective surgery or drugs which were causing side effects; (3) Chronic diseases, on which orthodox medicine had no helpful effect. He stated he understood the opponents' position that the bill seemed to broaden mandated benefits; however, the reality of costs being lowered should be considered, and **SB 388** would do that. He commented there were many folks who were using naturopaths, but their insurance was not reimbursing them; however, they were finding relief so they did not need the expensive care. He reiterated **SB 388** was a good bill, and he was willing to work with folks on amendments, in order to make it a better bill.

{Tape : 2; Side : A; Approx. Time Counter : 8.3}

EXECUTIVE ACTION ON SB 224

Motion: **SEN. CHRISTIAENS** moved that **SB 224 DO PASS.**

Discussion:

Ken Mordan, DPHHS, referred to a question from a Committee member the day **SB 224** was heard, i.e., how many people could be treated in the pathological gambling program, and the projection of costs. He referred to the underlined segment of Page 25 of **EXHIBIT (phs35a05)**, and said it was difficult to determine just how many would be treated because the program was not up and running. However, the interim report (Page 26, top) indicated in-patient and out-patient costs of corresponding percentage of gamblers seeking treatment. He suggested Montana's numbers would be similar to those in North Dakota, where they served 49 clients and 38 family members the first year. He said the numbers might rise after the treatment programs were established, because more people would be aware of treatment options. However, only a small portion (12-20%) of problem gamblers required in-patient treatment; therefore, the information in the report represented the extremes. **Mr. Mordan** remarked he had talked to the person who ran the gambling program in North Dakota, and they had a biennium budget of \$100,000 for treatment services, or \$50,000 per year. They set up a program in one community, brought people in and were able to serve about 49 compulsive gamblers and 38 family members with the \$50,000. Since Montana was new at getting into this treatment, it was difficult for the Department to give definitive costs; however, it might be possible to reduce the costs through being creative and using the outpatient services.

{Tape : 2; Side : A; Approx. Time Counter : 15.3}

SEN. B.F. "CHRIS" CHRISTIAENS asked for a copy of the treatment program from North Dakota. **Ken Mordan** said he currently had a short description, and the North Dakota person in charge said she could send their description, as well as outcomes for the first year.

SEN. CHRISTIAENS said he had talked with Rocky Mountain Treatment Center, and they indicated they had no research; however, the report by **Mr. Mordan** indicated they did. He said the young man who testified on the bill said he could get no treatment in Great Falls. He had been in prison and there was no treatment there, either. **SEN. CHRISTIAENS** said he had talked to the Board of Pardons, and the reality was no one knew what kind of treatment there was; in fact, about one out of every six prison inmates was there because of some type of gambling issue. Also, since these prison inmates did not receive any kind of gambling treatment, they were released and put back into the community without receiving help. **SEN. CHRISTIAENS** reiterated how the young man, after release from prison, went to several agencies but they

could not help him because they either did not offer gambling addiction treatment or did not know how.

SEN. FRED THOMAS asked if action on the bill should be postponed.

SEN. CHRISTIAENS said he did not necessarily think they should do that; however, there definitely were some major gaps.

SEN. DOROTHY ECK said she would love to see the bill pass, with additional funding; however, the last thing they heard was if additional funding was put in, the bill would fail.

SEN. CHRISTIAENS said he was concerned, that with the money currently in the bill, they get "something for their buck". If North Dakota treated folks with \$50,000, there probably was too much money, or at least there was plenty, in the bill. This seemed true, when it seemed they did not know exactly what they were going to do with it. **Ken Mordan** said bill allowed \$48,000 the first year, and part of it was to set up a crisis hotline. He had talked to several people about the hotline, and all agreed setting it up was an important part of the process. As to the second year of the budget, the \$148,000, the request from the Committee was to present some realistic figures.

SEN. EVE FRANKLIN suggested setting up an infrastructure first, and when there was one counselor or program, they should go ahead, i.e., why do a case finding when there was nobody to refer them to. She also was questioning the Department's treatment design. **Mr. Mordan** said the design of the program was within the context of the law, i.e., if the law passed, they were required to implement the program. He admitted that currently, people who called into the help line would be referred to local Gamblers Anonymous meetings, which was how most states started. There was a hotline in Texas, which was run to other states just beginning the process. Also, there was some gambling treatment available, though it usually was in the private sector, such as Rimrock Foundation, Rocky Mountain Treatment Center, etc.

SEN. FRED THOMAS asked if the bill did what needed to be done.

SEN. FRANKLIN said it was predetermined what the mandated services were, but the planning had not been done

SEN. CHRISTIAENS said his subcommittee had just met, and he asked them to put something together, which would work in corrections, to deal with those who had gambling problems.

SEN. FRANKLIN suggested Section 3 be stricken, because if the parameters had not been determined and the Department had not determined what it needed, how could a program be mandated.

{Tape : 2; Side : B; Approx. Time Counter : 0}

SEN. DOROTHY ECK said the industry indicated they continue doing that anyway. She thought developing the plan was important; however, if nothing else was done, there would be nothing out there. She suggested Section 3 be kept, because they should be able to hire a gambling counselor and work with one.

SEN. SUE BARTLETT said she felt pieces of Section 3 needed to be mandatory; however, Subsection 2, (A)&(B), could be permissive. The section would have to be rearranged, and there could be some things the Committee would feel mandatory. The Committee had dealt with the bill several other sessions, and it was a bit puzzling that the Department did not have a clearer idea of what to do.

SEN. THOMAS suggested everyone was comfortable with the conceptual amendment proposed by **SEN. BARTLETT**. Subsection 2, (A) & (B), should be moved under (3).

Motion: **SEN. BARTLETT** moved that **CONCEPTUAL AMENDMENT DO PASS**.

SEN. BARTLETT also thought an annual report should be required, and wondered if the Committee should make it mandatory they make a range of treatment services available.

Vote: Motion that conceptual amendment **DO PASS** carried unanimously, 10-0.

Motion/Vote: **SEN. CHRISTIAENS** moved that **SB 224 DO PASS AS AMENDED**. Motion carried unanimously 10-0.

{Tape : 2; Side : B; Approx. Time Counter : 6.8}

DISCUSSION ON SB 388

SEN. FRED THOMAS suggested amendments on **SB 388** be drawn up before executive action was taken. The first amendment would be language in Section 1 which would say something to the effect that instead of going directly to the naturopathic physician, they would be added to the list of participating providers. In other words, the medical doctor would have to refer the patient to the naturopath. The second amendment would be to strike the New Section 2, and the third amendment would make the effective date January 1, 2000, so it would correspond with policy dates.

SEN. BARTLETT asked if it fit into the title and **SEN. THOMAS** said he felt it did.

SEN. CHRISTIAENS said that was acceptable to him.

EXECUTIVE ACTION ON SB 364

Motion/Vote: SEN. ECK moved that AMENDMENT SB036401.ASF
EXHIBIT(phs35a06) DO PASS. Motion carried unanimously 9-0.

Motion/Vote: SEN. ECK moved that SB 364 DO PASS AS AMENDED.
Motion carried unanimously 9-0.

{Tape : 2; Side : B; Approx. Time Counter : 12}

EXECUTIVE ACTION ON SB 359

SEN. EVE FRANKLIN distributed copies of the amendments in **EXHIBIT**(phs35a07) and said language was being stricken from Sections 1-4, and new language inserted. The content did not change; however, the style and language did. The bill was the enabling legislation, which allowed the participation in the tobacco settlement with the "Big Four". In order for the settling companies to agree to the final settlement, each participating state had to have enabling legislation which would allow the non-participating manufacturers to have an escrow account. Those companies would pay an agreed-upon amount over 25 years' time. The reason for that account was protection for their credit advantage on the market and possible litigation and going out of business by the companies during the next 25 years. The escrow account would still be available. She said the issue with the suggested amendments was the language had to be exactly the same as the nation-wide language.

Motion: SEN. FRANKLIN moved that AMENDMENTS SB035901.ASF DO PASS.

Discussion:

SEN. CHRISTIAENS said this was a "trust me". SEN. FRANKLIN said she felt confident in placing her trust in Chris Tweeten.

SEN. BARTLETT asked if it would "pass muster" in editing. Susan Fox said she had alerted the necessary people not to touch.

SEN. THOMAS asked if the language conformed identically to the national, and if it was absolutely necessary that language be conformed to. Chris Tweeten said it was necessary, in order to

avoid the prospect of litigation, to have the qualifying statute.

SEN. THOMAS asked who the firm of Wachtell, Lipton, Rosen & Katz was. **Chris Tweeten** said they were the attorneys for Phillip Morris, and were also delegated by the other three original participating manufacturers to be the lead firm in respect to the qualifying statute.

{Tape : 2; Side : B; Approx. Time Counter : 18.9}

Vote: Motion that AMENDMENTS SB035901.asf carried unanimously, 9-0.

Motion: SEN. FRANKLIN moved that SB 359 DO PASS AS AMENDED.

Discussion:

SEN. DOROTHY ECK asked what happen if amendments were made during the next 25 years. **Chris Tweeten** said it was a state statute, and it was the legislature's prerogative to change it. The effect would be the raising of the issue which was being attempted to be "laid to rest", i.e., in some future moment they would lose some market share and claim this was triggered. The argument, then, would be whether this was a conforming statute.

Vote: Motion that SB 359 DO PASS AS AMENDED carried unanimously, 9-0.

REFERENCE TO SB 322

CHAIRMAN AL BISHOP appointed **SEN. FRED THOMAS**, **SEN. DUANE GRIMES** and **SEN. B.F. "CHRIS" CHRISTIAENS** to a subcommittee, with **SEN. THOMAS** the chairman.

ADJOURNMENT

Adjournment: 5:45 P.M.

SEN. AL BISHOP, Chairman

MARTHA MCGEE, Secretary

JANICE SOFT, Transcriber

AB/MM

EXHIBIT (phs35aad)